

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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A&A Global Imports, Inc.,

Plaintiff,

v.

CBJ Distributing LLC d/b/a Cannabiz
Supply; et al.,

Defendants.

And related counterclaims.

Case No. 2:22-cv-00576-RFB-DJA

Order

Before the Court are five motions to seal. (ECF Nos. 28, 38, 44, 51, 53). Defendants ask to redact portions of their motion for summary judgment and an exhibit thereto (ECF No. 28). Plaintiff asks to redact portions of its response to that motion and its motion for preliminary injunction. (ECF No. 38). Defendants move to redact portions of their reply in support of their motion to stay discovery (ECF No. 44) and reply in support of their motion for summary judgment (ECF No. 51). Finally, Defendants move to redact portions of their response to Plaintiff's motion for preliminary injunction. (ECF No. 53). Both parties rely on the Court's previous order, granting Plaintiff's motion to redact a paragraph from their complaint which quoted directly from the settlement agreement and to seal the settlement agreement itself. (ECF No. 18). However, the scope of the information the parties seek to seal has changed since the Court granted Plaintiff's initial motion to seal. The Court thus revisits the issue and denies the pending motions to seal without prejudice.

I. Discussion.

A party seeking to file a confidential document under seal must file a motion to seal and must comply with the Ninth Circuit's directives in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) and *Ctr. for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092,

1 1097 (9th Cir. 2016). A party seeking to seal judicial records attached to motions more than
 2 tangentially related to the merits of the case must meet the “compelling reasons” standard. *See*
 3 *Kamakana*, 447 F.3d at 1183; *Ctr. for Auto Safety*, 809 F.3d at 1101. Under that standard, “a
 4 court may seal records only when it finds ‘a compelling reason and articulate[s] the factual basis
 5 for its ruling, without relying on hypothesis or conjecture.’” *Ctr. for Auto Safety*, 809 F.3d at
 6 1097 (quoting *Kamakana*, 447 F.3d at 1179). For records attached to motions not more than
 7 tangentially related to the merits of the case, the “good cause” standard applies. *See Ctr for Auto*
 8 *Safety*, 809 F.3d at 1095, 1101. Any request to seal must also be “narrowly tailored” to remove
 9 from the public sphere only material that warrants secrecy. *Harper v. Nevada Property I, LLC*,
 10 552 F.Supp.3d 1033, 1040-41 (D. Nev. 2021). To the extent any confidential information can be
 11 easily redacted while leaving meaningful information available to the public, the Court must
 12 order that the redacted versions be filed rather than sealing entire documents. *Id.* (citing *Foltz v.*
 13 *State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003)).

14 “[T]he mere fact that the parties’ settlement agreement may contain a confidentiality
 15 provision, without more, does not constitute a compelling reason to seal the information.” *Helix*
 16 *Environmental Planning, Inc. v. Helix Environmental and Strategic Solutions*, No. 3:18-cv-
 17 02000-AJB-AHG, 2021 WL 120829, at *1 (S.D. Cal. Jan. 13, 2021); *see also FTC v. AMG*
 18 *Servs.*, No. 2:12-cv-00536-GMN-VCF, 2020 U.S. Dist. Lexis 232231, at *5 (D. Nev. Dec. 10,
 19 2020) (“the confidentiality of the settlement agreement alone does not provide a compelling
 20 reason to seal”). That is particularly true in the context of a motion to enforce settlement, as the
 21 local rules put the parties on notice that the Court may order the disclosure of otherwise
 22 confidential information as part of the resolution of that motion. *See* Local Rule 16-5. The logic
 23 behind this approach is clear: although parties to a confidential settlement agreement may prefer
 24 to keep its terms secret, “once they turn to the federal court to resolve their disputes ... the public
 25 administration of justice demands transparency.” *Avocados Plus Inc. v. Freska Produce Int’l*
 26 *LLC*, No. 2:19-cv-06451-RGK-JC, 2019 WL 12345580, at *2 (C.D. Cal. Oct. 8, 2019)
 27 (quoting *Polaris Innovations Ltd. v. Kingston Tech. Co.*, No. SA CV 16-00300-CJC(RAOx),
 28 2017 WL 2806897, at *7 (C.D. Cal. Mar. 30, 2017)).

1 At the same time, courts recognize the general benefits of keeping settlement discussions
2 and settlements confidential when feasible. *See, e.g., U.S. E.E.O.C. v. ABM Indus. Inc.*, No. 1:07-
3 cv-01428 LJO JLT, 2010 WL 582049, at *2 (E.D. Cal. Feb. 12, 2010) (“Confidentiality of the
4 mediation process encourages settlement”) (citing *United States v. Glens Falls Newspapers, Inc.*,
5 160 F.3d 853, 858 (2d Cir. 1998)). Courts must balance the parties’ need for secrecy against the
6 public’s interests in transparency, including its interest in “understanding the judicial
7 process.” *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 679 & n.6 (9th Cir. 2010). Given all
8 these considerations, some courts have taken a middle approach in the context of a motion to
9 enforce a settlement whereby the terms of settlement pertinent to analyzing the motion to enforce
10 will not be kept secret, but the terms that are irrelevant to the motion to enforce will be kept
11 secret. *See United States ex rel. Lesnik v. Eisenmann SE*, No. 16-cv-01120-LHK, 2021 WL
12 2092944, at *3 (N.D. Cal. May 11, 2021); *see also Pizza v. Fin. Indus. Regul. Auth., Inc.*, No. 13-
13 cv-0688 MMC (NC), 2015 WL 1383142, at *2 (N.D. Cal. Mar. 19, 2015).

14 The Court denies the pending motions to seal without prejudice. The parties’ use of
15 redactions and sealing has evolved since the Court first granted Plaintiff’s motion to seal. That
16 motion dealt with Plaintiff’s complaint, which included a single direct quote from the settlement
17 agreement and attached the settlement agreement as an exhibit. (ECF No. 2). In that context, the
18 redaction and sealing did not diminish the public’s interest in transparency. The crux of the
19 complaint was still discernable, despite the redaction. Given Plaintiff’s representations that the
20 instant action “involves enforcement of the Settlement Agreement, not its confidential business
21 terms,” and that Plaintiff would have difficulty settling other cases if its negotiated terms were
22 publicly disclosed, the Court found compelling reasons to grant the motion. (ECF Nos. 2, 18).

23 But now, the parties ask to redact significant portions of their motions, certain of which
24 motions are more than tangentially related to the merits of the case and certain of which
25 redactions detract from the public’s ability to understand the motions. While the Court
26 recognizes that the parties negotiated terms that they consider confidential, the redactions are too
27 broad for the Court to justify sealing based only on the fact that the parties negotiated the terms of
28 the agreement. The redactions cover more than direct quotes to the agreement, but also

1 references to its terms and even references to its existence (despite unredacted references to the
2 existence of the settlement agreement elsewhere).¹ These redactions also obscure the crux of the
3 parties' dispute: why Plaintiff believes that Defendants breached the settlement agreement and
4 why Plaintiff is entitled to enforcement of those terms.

5 Additionally, the parties' arguments about why the redactions are appropriate, why they
6 are narrowly tailored, and why documents should stay under seal rely in part on the Court's
7 previous order. But they do not provide compelling reasons to seal these specific redactions or
8 documents, which redactions and sealed portions obscure more information than those in the
9 complaint. Given the context of the motions—some attached to motions more than tangentially
10 related to the merits and all related to enforcement of the settlement agreement—and the Ninth
11 Circuit's directive for the Court not to rely on hypothesis or conjecture in its orders, the Court
12 cannot grant the motions to seal as they are.

13 The Court finds that the "middle approach" is persuasive here. On the one hand, it would
14 be unfair to deprive the parties of the benefit of their bargain (which includes confidentiality). On
15 the other, the parties have come to the Court with a dispute over the settlement agreement,
16 heightening the need for transparency. The Court thus finds that the terms of the settlement
17 agreement necessary to the parties' dispute should not be kept secret. But those which have no
18 bearing on the outcome of the case—for example, the amount of settlement—may remain under
19 seal.

21 ¹ For example, Defendants' reply in support of their motion to stay discovery redacts the term
22 "Exhibit C." *Compare* (ECF No. 44 at 6) *with* (ECF No. 43 at 6). But "Exhibit C" simply refers
23 to the exhibit Defendants attached to their reply which depicts the design of bag which Plaintiff
24 asserts is substantially identical to Defendants' bag. And the content of the exhibit is clear from
the brief. (ECF No. 43 at 6). So, it is unclear why its location is a secret or why the settlement
agreement's confidentiality provision lends its location any secrecy.

25 Plaintiff's motion for preliminary injunction contains another example. There, Plaintiff's motion
26 leaves the terms "substantially identical bags" unredacted while simultaneously redacting a
similar term. *Compare* (ECF No. 41 at 4) *with* (*id.* at 8). While it would appear that this is
27 because the similar term is a negotiated portion of the settlement agreement, that is not explained
28 in the motions to seal, forcing the Court to rely on hypothesis and conjecture, precisely what the
Ninth Circuit has forbidden.

1 The Court also recognizes that the parties have—not unreasonably—relied on its previous
2 order in their instant motions to seal and thus, may have provided less context than they might
3 have under normal circumstances. The Court thus denies the parties’ motions without prejudice.
4 It will keep the documents at issue under seal for thirty days. Before thirty days, the parties must
5 stipulate or move to seal the documents, unseal them, or seal some and unseal others. Because
6 the parties have not disagreed on sealing, the Court encourages the parties to stipulate. Any
7 stipulation or motion to maintain the documents under seal should explain why the documents or
8 redactions at issue: (1) meet the applicable *Kamakana* and *Ctr. for Auto Safety* standards; and
9 (2) why the protected information is unnecessary to the parties’ dispute and has no bearing on the
10 outcome of the case

11
12 **IT IS THEREFORE ORDERED** that the pending motions to seal (ECF Nos. 28, 38, 44,
13 51, and 53) are **denied without prejudice**. The parties shall move or stipulate to seal the
14 documents, unseal them, or seal some and unseal others on or before **November 21, 2022**. If the
15 parties do not file a motion or stipulation to seal regarding ECF Nos. 28, 37, 42, 44, 51, and 53 on
16 or before November 21, 2022, the Clerk of Court is kindly directed to unseal these documents on
17 November 22, 2022.

18
19 DATED: October 21, 2022



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE